



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FACSIMILE AND FIRST CLASS MAIL

Sandra Yartin DePoy
ARDA-ROC PAC
1201 15th Street, NW
Suite 400
Washington, DC 20005

NOV 19 2008

RE: MUR 6129
American Resort Development
Association Resort Owners Coalition
PAC and Sandra Yartin DePoy, in
her official capacity as treasurer

Dear Ms. DePoy:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting American Resort Development Association Resort Owners Coalition PAC (the "Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On November 7, 2008, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441b(a), 441e(a), 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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Letter to Sandra Yartin DePoy
MUR 6129 (ARDA-ROC PAC)
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

Sincerely,



Donald F. McGahn II
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: American Resort Development Association Resort Owners Coalition PAC, and Sandra Yartin DePoy, in her official capacity as treasurer

MUR: 6129

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On February 12, 2008 the Audit Division referred three findings from its audit of the American Resort Owners Coalition PAC, and Sandra Yartin DePoy, in her official capacity as treasurer, ("Committee" or "ARDA-ROC PAC") to the Office of the General Counsel for enforcement. The referral for violations from the Committee's activity from 2003 and 2004 included findings of (1) Misstatement of Financial Activity, (2) Receipt of Prohibited Contributions, and (3) Improper Solicitation of Contributions.

The audit of the Committee was limited in its scope because the Committee does not maintain a single centralized database of contributions from these individuals. Rather, resort management companies collect contributions through periodic billings to timeshare owners for taxes, maintenance, and other services. Most contributions received by the Committee are in amounts of five dollars and do not require itemization on reports. As a result of the volume of contributions and the indirect method in which they are collected, the Committee does not

1 maintain detailed records of contributions from individuals. The lack of a centralized database or
2 other record of contributions from individuals also limited the Audit staff's ability to accurately
3 project the magnitude of testing results. As a result, the audit only examined 47,715
4 contributions from 2003 through 2004. These contributions accounted for 10% of the total dollar
5 value of contributions, but the audit could not determine the exact number of contributions that
6 were left unexamined.

7 Despite the limited scope of the audit, the Audit Division was able to conduct a full
8 review of the Committee's reported activity. This review revealed significant misstatements of
9 receipts, disbursements, and cash on hand. The limited review of the Committee's contributions
10 also revealed a number of prohibited corporate and foreign national contributions, as well as
11 solicitations which did not comply with the voluntariness requirements of the Commission's
12 regulations.

13 **B. Misstatement of Financial Activity**

14 Each treasurer of a political committee must file reports of receipts and disbursements
15 with the Commission. 2 U.S.C. § 434(a); 11 C.F.R. § 104.1. These reports must accurately
16 reflect the committee's cash on hand, receipts, and disbursements. 2 U.S.C. § 434(b)(1),(2), and
17 (4). During both 2003 and 2004, the Committee misstated its receipts, disbursements, and cash-
18 on-hand balances. For 2003, the Committee understated its receipts by \$8,644, understated its
19 net disbursements by \$190,661, and overstated its year-end balance by \$87,724. In 2004, the
20 Committee understated its net receipts by \$1,236,536 and its net disbursements by \$394,353,
21 resulting in a year-end balance that was understated by \$754,459. Therefore, there is reason to

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1 believe that American Resort Development Association Resort Owners Coalition PAC, and
2 Sandra Yartin DePoy, in her official capacity as treasurer, violated 2 U.S.C. § 434(b).

3 **C. Receipt of Prohibited Corporate Contributions**

4 The Act prohibits the making and knowing receipt of corporate contributions. *See*
5 2 U.S.C. § 441b(a). To test contributions for permissibility, the Audit staff analyzed a sample of
6 contributions from the 81 homeowner associations from which the Committee received over
7 \$5,000 from during the audit period. The Audit staff selected 15 associations for sampling, and
8 received records from 12, consisting of 47,715 contributions and totaling \$235,517. These
9 47,715 contributions account for approximately 10% of the total dollar value received during the
10 audit period. The Audit staff identified \$18,323 (7.8%) in contributions from this sample that
11 appeared to be either from corporations or from foreign nationals. Approximately \$3,274.91 of
12 these violations was from apparent prohibited corporate contributions. Therefore, there is reason
13 to believe that American Resort Development Association Resort Owners Coalition PAC, and
14 Sandra Yartin DePoy, in her official capacity as treasurer, violated 2 U.S.C. § 441b(a).

15 **D. Receipt of Prohibited Foreign National Contributions**

16 The Act prohibits the making and knowing receipt of contributions from a foreign
17 national. *See* 2 U.S.C. § 441e(a). Of the \$18,323.05 in prohibited contributions that Audit
18 discovered in its limited review, \$13,242.14 came from apparent prohibited foreign national
19 contributions. Therefore, there is reason to believe that American Resort Development
20 Association Resort Owners Coalition PAC, and Sandra Yartin DePoy, in her official capacity as
21 treasurer, violated 2 U.S.C. § 441e(a).

E. Improper Solicitation of Contributions

To ensure that contributions solicited for a separate segregated fund are voluntary, a solicitation for contributions, whether written or oral, must inform the member being solicited at the time of the solicitation of the political purposes of the separate segregated fund and of his or her right to refuse to so contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(2)-(5). *See also* AO 1998-19 (finding that a solicitation that did not include a statement that the member has a right to refuse to contribute without any reprisal to be deficient even where the solicitation already states that contributions are voluntary) and AO 1988-3 (requiring separate segregated funds to adhere to 11 C.F.R. § 114.5 to ensure contributions are voluntary).

The Audit staff examined four examples of the Committee's solicitation material. Although these solicitations were from the 2006 election cycle, the Committee indicated that they did not change significantly from prior years. Of the sample solicitations, only one of the solicitations complied with the requirements of 11 C.F.R. § 114.5(a)(2)-(4), which requires certain disclaimers regarding the voluntariness and political purposes of contributions. *Id.* at 13. Therefore, there is reason to believe that American Resort Development Association Resort Owners Coalition PAC, and Sandra Yartin DePoy, in her official capacity as treasurer, violated 2 U.S.C. § 441b(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4).

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